

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-11-90051

Before **BRISCOE**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “Misconduct Rules”); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.*, and 3) the “Breyer Report,” a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled *Implementation of the Judicial Conduct and Disability Act of 1980*. The Breyer Report may be found at: <http://www.supremecourt.gov/publicinfo/breyercommitteereport.pdf>. To the extent that there are any relevant prior decisions of the full Judicial Council of this circuit which are consistent with those authorities, they may also govern my consideration of this complaint.

Complainant has been provided with a copy of the Misconduct Rules, and the Rules are also accessible on the Tenth Circuit’s web page at:

<http://www.ca10.uscourts.gov/misconduct.php>. In accord with those rules, the names of the complainant and subject judge shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant made numerous claims against the subject judge. Some took issue with the judge's rulings in an underlying case. These claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2.

Additional claims were based on alleged comments made by the judge during underlying proceedings. I sought to undertake a limited inquiry in this matter, *see* Misconduct Rule 11(b), by reviewing proceeding transcripts to determine the veracity of the allegations. However, the underlying proceedings were lengthy (the docket runs over 1300 entries) and complainant did not sufficiently identify the proceedings such that I could reasonably identify the relevant trial and hearing transcripts. I sent a limited inquiry letter to complainant seeking additional information, which letter was returned as undeliverable. At this juncture, I conclude that further investigation is not reasonably possible. These claims are dismissed as "incapable of being

established through investigation” without further information. *See* Misconduct Rule 11(c)(1)(E).

Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judge and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2). A copy will also be sent to complainant at the last known address, with instructions for filing a petition for review. Complainant also remains free to file another complaint on these same allegations.

So ordered this 23rd day of May, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe
Chief Circuit Judge